United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 19-0631**
	)	**Issued: September 5, 2019**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Oklahoma City, OK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 22, 2019 appellant filed a timely appeal from a December 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her lumbar condition and bilateral lower extremity vascular disorder are causally related to the accepted factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 18, 2017 appellant, then a 60-year-old management and program assistant, filed an occupational disease claim (Form CA-2) alleging injuries to her lower back and both lower extremities, which she attributed to sitting for long periods, lifting, walking on concrete, and opening and closing heavy doors while in the performance of duty. She identified July 1, 2006 as the date that she first became aware of her conditions and October 2, 2017 as the date she realized that the conditions were caused or aggravated by her federal employment. On the reverse side of appellant's CA-2 form, the employing establishment indicated that she stopped work on October 2, 2017.

In an October 2, 2017 initial examination report, Dr. David Dawson, a family practitioner, noted that appellant worked as an office manager for approximately 12 years, and that "[appellant] has put in for the leave program as she is unable to go back to work on a daily basis." By way of appellant's history, he noted anxiety, osteoarthritis, an aneurysm, and aneurysm repair graft. Dr. Dawson reported that she currently complained of back pain and neuropathy, an inability to feel her toes or walk for long periods, and that she indicated that she could not perform any lifting, although she did experience relief with rest. Upon physical examination, he diagnosed arterial deficiencies to the lower extremities and lumbar strain without evidence of radiculopathy. Dr. Dawson opined that "these injuries arose out of and are causally related to [appellant's] required work[-]related physical activities." He recommended occupational therapy to treat appellant's conditions, twice per week for four weeks.

By development letter dated October 25, 2017, OWCP notified appellant of the type of additional evidence needed to establish her occupational disease claim, including factual evidence documenting any hazardous exposures at work, and a statement from her physician explaining the causal relationship between those exposures and the claimed conditions. It also provided an attached questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a follow-up report of November 28, 2017, Dr. Dawson further noted that appellant had a history of multiple surgeries for blocked arteries. Since the last appointment, he noted that she could work for short periods, but required frequent breaks. Dr. Dawson recommended that appellant be placed on temporary total disability.

In a January 9, 2018 response to OWCP's questionnaire, appellant explained that her medical conditions had worsened in her lower back and both lower extremities which necessitated three surgeries in her lower extremities. She stated that her full-time job duties included: pushing/pulling mail carts weighing approximately 40 pounds; storing, lifting, and retrieving boxes of files, occasionally *via* step ladder; and picking up daily supplies and equipment from other locations. Appellant further related that she complained of having job duties which required her to remain sedentary for over six hours, such as answering telephones and performing data entry. She also attributed her injuries to walking on concrete between buildings, and opening and closing doors. Appellant denied the ability to perform any activities outside of her employment that required extended sitting, walking, lifting, bending, or any other repetitious activity.

By decision dated January 19, 2018, OWCP denied appellant's occupational disease claim. It explained that the medical evidence of record did not establish a causal relationship between the diagnosed conditions and the accepted factors of her federal employment.

On January 23, 2018 appellant requested reconsideration and submitted additional evidence in support of her claim.

In a January 15, 2018 report, Dr. John Hughes, a Board-certified orthopedic surgeon, noted that appellant had experienced significant difficulties with her vascular status, "especially as far as [appellant's] legs [were] concerned." He noted that appellant had undergone femoral bypass, and that she had stents placed. Dr. Hughes diagnosed vascular insufficiency of the lower extremities, status post femoral bypass operation; and, lumbar strain without evidence of radiculopathy. He recommended against further surgical intervention and to continue occupational therapy.

By decision dated February 16, 2018, OWCP denied modification of its January 19, 2018 decision.

In a follow-up report dated February 12, 2018, Dr. Hughes reported little change since the previous report. He noted that appellant ambulated, and that she related that she must wear slippers because the outside of her feet are undergoing vascular changes. Dr. Hughes repeated his diagnoses, and his recommendation against surgery and in favor of occupational therapy.

In a March 26, 2018 follow-up report, Dr. Hughes explained that it was "an overuse situation that occurred as a result of appellant's occupational activities and that this condition resulted from repetitive trauma "as far as her low back was concerned." He diagnosed a lumbar strain without evidence of radiculopathy and reiterated his position favoring conservative treatment.

In an April 3, 2018 follow-up report, Dr. Dawson noted that, with regard to appellant's ability to return to work, he did not believe that she could do so in any capacity as she has severe peripheral arterial disease, which had already resulted in aortic surgeries, and numerous stents placed in her lower extremities. He noted that, while she had a lumbar strain, this condition was not what was preventing her from returning to work. Dr. Hughes ordered a functional capacity evaluation and indicated that occupational therapy would continue as planned.

In a May 15, 2018 follow-up report, Dr. Dawson noted that appellant had pain in her lower extremities and lumbar spine, which was aggravated by work duties of lifting or walking. He diagnosed lumbar strain and arterial deficiencies of the lower extremities and reiterated his opinion on causal relationship. Dr. Dawson further advised that appellant was temporary totally disabled and recommended additional occupational therapy.

In a June 11, 2018 follow-up report, Dr. Hughes noted that appellant had always had restriction of motion in her lumbar spine and that she had a computerized tomography (CT) scan that revealed an old compressive fracture, which did not occur on the job. He explained that generally compressive fractures tend to be aggravated over time and will go from a mild compression to a moderate/severe compression as a natural result of the aging and work-related process that appellant experienced. Dr. Hughes also noted that appellant had additional disc protrusion problems that may or may not require future surgical intervention. He diagnosed

arterial insufficiency of the lower extremities and a lumbar strain/sprain with old compressive problems as well as degenerative disc disease. Dr. Hughes recommended disability retirement.

In a June 19, 2018 follow-up report, Dr. Dawson relayed that appellant provided a magnetic resonance imaging (MRI) scan report that was taken on her lumbar spine in 2010, which revealed numerous levels of degenerative disc disease and a bulging disc. He related that "[appellant's] disorder is related to and has worsened" from her job duties, and that she already had degenerative disc disease and a bulging and herniated disc in her lumbar spine, which he was sure had worsened since 2010, as "[appellant] did work doing her job since then[.]" Dr. Dawson opined that she should be medically retired. He concluded, "[a] lot of [appellant's] disorder is related to her repetitive motion and repetitive motion injury from her job with a causal relationship."

In a July 31, 2018 follow-up report, Dr. Dawson reported that, "many years ago," appellant fell off of a horse, fracturing her first lumbar vertebra. He stated that this injury has since healed, "but it was seen on an MRI [scan] of her back that was done in 2011." Dr. Dawson noted that, since appellant started working for the employing establishment, she had to lift palettes, load files, move paper, ascend and descend ladders with loads of paper and files, with some items weighing over 20 pounds each, and "some of them 11 on a cart." He related that she had to walk from building to building and push carts around, some weighing 50 pounds each. Dr. Dawson explained that, over time, this had aggravated appellant's previous back injury with a fractured lumbar vertebra, causing her back issues from "previous pain that … sometimes radiated down to [appellant's] lower limbs." He repeated the diagnoses of arterial insufficiency of the lower extremities and a lumbar strain and sprain with old compressive problems as well as degenerative disc disease. Dr. Dawson opined that the repetitive job duties aggravated and/or caused appellant's back injury, "with causative MRI [scan] findings." He also noted that appellant sustained a fracture of the lumbar vertebra before she started working for the employing establishment, and "it [had] clearly been aggravated by [appellant's] physical activities … during her job duties." Dr. Dawson noted that occupational therapy had been of some utility.

In an August 28, 2018 follow-up report, Dr. Dawson reiterated his opinion that repetitive lifting, climbing and pushing "aggravated and/or caused the back injury, with the MRI [scan] findings."

On October 5, 2018 appellant requested reconsideration. With her request, she submitted a follow-up report from Dr. Dawson dated November 6, 2017. In this report, Dr. Dawson noted his opinion that, in the course of her employment, appellant's lower extremities and lumbar spine were aggravated with constant walking, standing, carrying boxes and other items, bending, and kneeling. He stated that these injuries were constantly aggravated by work activities and physical activities.

In an October 2, 2018 follow-up report, Dr. Dawson noted that, even though appellant had atherosclerotic artery disease, she also had degenerative disc disease and a history of fractured vertebra in her back. He stated that "[t]his [had] been aggravated over time" from walking on concrete, moving heavy boxes, lifting, twisting, and filing. Dr. Dawson continued, "[t]his clearly, over time … aggravated [appellant's] previous back injury in a causal relationship and [was] thus clearly shown to be a cause from an aggravation by her employment[.]" He recommended

continuing therapy and diagnosed lumbar strain/sprain with degenerative disc disease of the lumbar spine.

In October 25 and November 29, 2018 follow-up reports, Dr. Dawson opined that the initial injury stemmed from a horse-riding accident, which he believed that had since been aggravated by appellant's job duties.

In a decision dated December 26, 2018, OWCP denied modification. It again found that the medical evidence submitted was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[6]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by

[2] *Id.*

[3] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *A.C.*, Docket No. 19-0266 (issued May 28, 2019); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *J.P.*, *supra* note 3; *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 6.

medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[9]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her lumbar condition and bilateral lower extremity vascular disorder are causally related to the accepted factors of her federal employment.

In an October 2, 2017 report, Dr. Dawson diagnosed arterial deficiency to the lower extremities and a lumbar strain/sprain without radiculopathy, and opined that "these injuries arose out of and are causally related to [appellant's] required work[-]related physical activities." While the report opines on causal relationship, it is of limited probative value because of its conclusory nature.[11]

In November 6 and 28, 2017 follow-up reports, Dr. Dawson related his opinion that appellant's lower extremities and lumbar spine were aggravated by her job duties of constant walking, standing, carrying items, bending, and kneeling. He stated that these injuries were constantly aggravated by work activities and physical activities. While Dr. Dawson described appellant's work activities, he did not offer an explanation as to how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[12] As such, his opinion is of no probative value.[13]

The January 15 and February 12, 2018 reports of Dr. Hughes and the April 3, 2018 report of Dr. Dawson are also insufficient to establish causal relationship. While Dr. Hughes provided diagnoses and a very general medical history of a femoral bypass and stent placement, he offered no opinion on what might have caused the diagnosed conditions. Similarly, while Dr. Dawson notes his belief that appellant is unable to return to work, he did not offer an opinion on causal relationship in his April 3, 2018 report. Medical evidence which does not offer an opinion on causal relationship is of no probative value to the issue of causal relationship.[14]

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[9] *Id.*

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *P.S.*, Docket No. 19-0459 (issued July 26, 2019); *N.S.*, Docket No. 19-0167 (issued June 21, 2019).

[11] *M.S.*, Docket No. 19-0189 (issued May 14, 2019).

[12] *Id.*

[13] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In Dr. Hughes' March 26, 2018 follow-up report, he noted that appellant worked as an office manager for 12 years, and that her job duties required her to go from building to building and carry supplies. He noted that she "did a lot of up and down work as far as [appellant's] desk was concerned." Dr. Hughes indicated that it was "an overuse situation that occurred as a result of these occupational activities. [Appellant] did not have a formal on-the-job injury" and that this condition resulted from repetitive trauma "as far as [appellant's] low back was concerned." He diagnosed a lumbar strain without evidence of radiculopathy. While Dr. Hughes' March 26, 2018 report offers an opinion on causal relationship, the report is of reduced probative value because it contains no physiological explanation as to how appellant's job duties caused the lumbar condition.[15] The Board also notes that his report is expressly limited to her lumbar condition, and makes no suggestion that the vascular issues in her lower extremities are related to her employment.

In his May 15, 2018 follow-up report, Dr. Dawson noted that appellant experienced pain in her lower extremities and lumbar spine while working, which he opined was aggravated by work activities of lifting or walking, and reiterated his conclusion that there was a causal relationship between her conditions and her work. While this report describes appellant's job duties and states that her duties aggravated her conditions, the report offers no medical rationale as to how these activities would aggravate each condition. The conclusory nature of this report renders it of little probative value.[16]

In a June 11, 2018 follow-up report, Dr. Hughes noted that appellant always had restricted motion in her lumbar spine and that a CT scan revealed an old nonwork-related compressive fracture. He explained that, generally, compressive fractures tend to be aggravated over time and will worsen as a natural result of aging and work-related processes. Dr. Hughes also noted that appellant had additional disc protrusion problems, and "things in her lumbar spine" that may or may not require future surgical intervention. He diagnosed arterial insufficiency of the lower extremities and a lumbar strain/sprain with old compressive problems, as well as degenerative disc disease. As it relates to appellant's lumbar conditions, Dr. Hughes identified a preexisting, nonwork-related injury that generally has a tendency to worsen partially due to the natural aging process, but does not distinguish the effects of the aggravation due to age from the aggravation, if any, due to her federal employment. The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[17]

In a June 19, 2018 follow-up report, Dr. Dawson indicated that appellant provided a lumbar MRI scan report from 2010, which revealed numerous levels of degenerative disc disease and a bulging disc. He related that "[appellant's] disorder is related to and has worsened" from her job duties, and that she already had degenerative disc disease and a bulging and herniated disc in her lumbar spine, which he was sure had worsened since 2010, as "[appellant] did work doing her job

[15] *Supra* note 13.

[16] *Id.*; *supra* note 11.

[17] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *see supra* note 10.

since then[.]" Dr. Dawson stated his opinion that appellant should be medically retired. He concluded, "[a] lot of her disorder is related to her repetitive motion and repetitive motion injury from her job with a causal relationship." The Board finds that this opinion is conclusory in nature and therefore is of limited probative value and insufficient to establish the claim.[18]

In his report of July 31, 2018, Dr. Dawson reported that "many, many years ago," appellant fell off of a horse, fracturing her first lumbar vertebra. He stated that this injury has since healed, "but it was seen on an MRI [scan] of [appellant's] back that was done in 2011." Dr. Dawson described appellant's job duties and explained that, over time, these duties aggravated her previous back injury and a fractured lumbar vertebra, causing her back issues from "previous pain that has sometimes radiated down to [appellant's] lower limbs." He repeated the diagnoses of arterial insufficiency of the lower extremities and a lumbar strain/sprain with old compressive problems, as well as degenerative disc disease. Dr. Dawson opined that the repetitive motion aggravated and/or caused her back injury, "with causative MRI [scan] findings." He also noted that appellant sustained a fracture of the lumbar vertebra before she started her federal employment, and stated "it has clearly been aggravated by [appellant's] physical activities that were done during her job duties." This report is both internally inconsistent and inconsistent with prior reports. In his prior reports, Dr. Dawson repeatedly diagnosed a lumbar strain without evidence radiculopathy, but later indicated that there had been evidence of radiculopathy. Within the report, he offered inconsistent statements as to whether the previous horse-riding injury had healed, or whether appellant had continuing residuals and in a constant state of aggravation. The Board has held that medical reports are of limited probative value if they are internally inconsistent.[19] Both reports also lack any sort of physiological, medical explanation of cause and effect are conclusory in nature, and are therefore are of limited probative value.[20]

In his October 2, 2018 follow-up report, Dr. Dawson noted that, even though appellant has atherosclerotic artery disease, she also has degenerative disc disease and a history of fractured vertebra in her back. He stated that "[t]his has been aggravated over time" from walking on concrete, moving heavy boxes, lifting, twisting, and filing. Dr. Dawson continued, "[t]his clearly, over time, has aggravated [appellant's] previous back injury in a causal relationship and is thus clearly shown to be a cause from an aggravation by her employment[.]" The report is of limited value because it is conclusory,[21] as it offers no physiological explanation of how these job duties caused or aggravated the diagnosed lumbar strain/sprain and the degenerative disc disease.[22] A physician's opinion on causal relationship must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[23]

[18] *Supra* note 16.

[19] *L.L.*, Docket No. 18-0861 (issued April 5, 2019).

[20] *J.P.*, Docket No. 19-0129 (issued April 26, 2019).

[21] *Supra* note 11.

[22] *Supra* note 20.

[23] *Id.*

Dr. Dawson's October 25 and November 29, 2018 follow-up reports suffer from similar defects, and the November 29, 2018 report indicates the initial injury was caused by a horse-riding accident. As noted above, in cases involving a preexisting injury or condition, the Board has placed special emphasis on the need for particularized and complete medical rationale with specific physiological explanations that distinguish the effects of the natural progression of the preexisting condition, any effects caused by aging or nonwork-related injuries and the employment factors.[24] This report contains no such rationale, and is thus insufficient to establish causal relationship.

As appellant has not submitted rationalized medical evidence establishing that her lumbar conditions and bilateral lower extremity vascular disorder are causally related to the accepted factors of her federal employment, she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her lumbar condition and bilateral lower extremity vascular disorder are causally related to the accepted factors of her federal employment.

[24] *See D.F.*, Docket No. 19-0067 (issued May 3, 2019); *R.R.*, *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board